

**EMPLOYMENT APPEALS BOARD DECISION**  
**2015-EAB-1297**

*Affirmed*  
*No Disqualification*

**PROCEDURAL HISTORY:** On October 2, 2015, the Oregon Employment Department (the Department) served notice of an administrative decision concluding the employer discharged claimant for misconduct (decision # 165559). Claimant filed a timely request for hearing. On October 28, 2015, ALJ Murdock conducted a hearing, at which the employer failed to appear, and on October 30, 2015 issued Hearing Decision 15-UI-46856, concluding claimant's discharge was not for misconduct. On November 3, 2015, the employer filed an application for review with the Employment Appeals Board (EAB).

The employer's request for relief is construed as a request to have EAB consider additional evidence under OAR 471-041-0090 (October 29, 2006), which allows EAB to consider new information if the party offering the information shows it was prevented by circumstances beyond its reasonable control from presenting the information at the hearing. In this case, the employer did not attend the hearing. It appears that one of the employer's witnesses was traveling and unavailable at the time of the hearing, and the employer's request to postpone the hearing was denied. The employer did not explain when it received the notice of hearing, what, if any, efforts the witness made to make herself available for the hearing, or what, if anything, the employer did to provide other witnesses for the hearing, especially considering that the employer had two other witnesses and did not assert or show that either of them were unavailable for the hearing. In the absence of such an explanation, we cannot conclude that the Office of Administrative Hearings (OAH) erred in failing to postpone the October 28th hearing.

The hearing record includes documents the employer submitted to OAH prior to the hearing, but they were not admitted into evidence because the employer did not provide a copy of them to claimant as required. Under the circumstances, the ALJ did not err in excluding the documents from evidence. The employer also submitted a witness list to the Office of Administrative Hearings (OAH), but not until six days after the hearing. Because the employer did not provide its witness list until almost a week after the hearing, the ALJ did not err by not calling them. In sum, the employer has not shown that a factor or circumstance beyond its control prevented it from participating in the hearing despite one witness's unavailability. Therefore, EAB may not consider the new information.

EAB reviewed the entire hearing record. On *de novo* review and pursuant to ORS 657.275(2), the hearing decision under review is **adopted**.

**DECISION:** Hearing Decision 15-UI-46856 is affirmed.

Susan Rossiter and J. S. Cromwell

**DATE of Service:** November 9, 2015

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](http://courts.oregon.gov). Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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